2001

State of Utah v. Richard A. Johnson : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff-Appellee, v. RICHARD A. JOHNSON, Defendant-Appellant.	Case No. 20010709-CA

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION FOR CRIMINAL NONSUPPORT, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-7-201 (1999), IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, THE HONORABLE DENISE P. LINDBERG PRESIDING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

OTHER WORKS CITED

IN THE UTAH COURT OF APPEALS

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals from a conviction for criminal nonsupport, a third degree felony, in violation of Utah Code Ann. § 76-7-201 (1999), in the Third Judicial District Court, Salt Lake County, the Honorable Denise P. Lindberg presiding. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(d) (1996).

ISSUE PRESENTED ON APPEAL AND STANDARD OF REVIEW

Does the State of Utah have jurisdiction to charge a Utah resident with violation of a Utah statute for failing to support his nonresident children?

The determination of whether a court has subject matter jurisdiction is a question of law, reviewed on appeal for correctness, according no deference to the district court's determination. *Schwenke v. Smith,* 942 P.2d 335, 336 (Utah 1997).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Resolution of this case requires interpretation of the following:

Utah Code Ann. § 76-1-201 (1999). Jurisdiction of offenses.

(1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state;

(c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is such an element, occurs within this state.

(3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.

(a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(b) If jurisdiction is based on such a presumption, this state shall retain jurisdiction unless the defendant proves by clear and convincing evidence that:

(i) the result of the homicide did not occur in this state; and

(ii) the defendant did not engage in any conduct in this state which is any element of the offense.

(4) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

(5) The judge shall determine jurisdiction.

Utah Code Ann. § 76-7-201 (1999). Criminal nonsupport.

(1) A person commits criminal nonsupport if, having a spouse, a child, or children under the age of 18 years, he knowingly fails to provide for the support of the spouse, child, or children when any one of them:

(a) is in needy circumstances; or

(b) would be in needy circumstances but for support received from a source other than the defendant or paid on the defendant's behalf.

(2) Except as provided in Subsection (3), criminal nonsupport is a class A misdemeanor.

(3) Criminal nonsupport is a felony of the third degree if the actor:

(a) has been convicted one or more times of nonsupport, whether in this state, any other state, or any court of the United States;

(b) committed the offense while residing outside of Utah; or

(c) commits the crime of nonsupport in each of 18 individual months within any 24-month period, or the total arrearage is in excess of $10,000.

(4) For purposes of this section "child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

(5) (a) In a prosecution for criminal nonsupport under this section, it is an affirmative defense that the accused is unable to provide support. Voluntary unemployment or underemployment by the defendant does not give rise to that defense.

(b) Not less than 20 days before trial the defendant shall file and serve on the prosecuting attorney a notice, in writing, of his intention to claim the affirmative defense of inability to provide support. The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses who the defendant proposes to examine in order to establish the defense.

(c) Not more than ten days after receipt of the notice described in Subsection (5)(b), or at such other time as the court may direct, the prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses who the state proposes to examine in order to contradict or rebut the defendant's claim.

(d) Failure to comply with the requirements of Subsection (5)(b) or (5)(c) entitles the opposing party to a continuance to allow for preparation. If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

STATEMENT OF THE CASE

Defendant was charged by Information filed 13 December 2000 with criminal nonsupport, a third degree felony, in violation of Utah Code Ann. § 76-7-201 (1999). R. 2-4. (The Information was amended 20 July 2001. R. 165-67.) Defendant moved to dismiss for lack of jurisdiction. R. 21-24. After a motion hearing, R. 214: 1-10, the court denied the motion "[b]ased on the plain language of [Utah's criminal jurisdiction] statute." R. 169-72 (addendum A). This Court granted defendant's petition for interlocutory review, in which the State concurred.

STATEMENT OF FACTS

This is an interlocutory appeal. Defendant has not been convicted or even bound over on the charged offense and retains the presumption of innocence. The facts recited here are taken from the probable cause statement in the Amended Information.

Defendant is obligated to pay $674 per month in child support for two children pursuant to a divorce decree entered in the State of Alaska. R. 166. Between 1 March 1996 and 12 December 2000, defendant should have paid $41,788, but paid only $2,664; the balance he knowingly and without just cause failed to pay. R. 165-66. The children are under 18 years old and in needy circumstances, or would have been in needy circumstances but for support received from sources other than defendant. R. 166.

Defendant resides in Utah; his ex-wife and children reside in Alaska. R. 1, 22, 27.

SUMMARY OF ARGUMENT

The State of Utah has jurisdiction to charge defendant, a Utah resident, with criminal nonsupport even if his children reside in Alaska.

The plain language of the Utah criminal jurisdiction statute establishes jurisdiction under two subsections. Subsections (1) and (2) provide that Utah has jurisdiction if the offense occurred partly in Utah. Because defendant failed to write and mail support checks while residing in Utah, the offense occurred at least partly in Utah. Subsection (4) provides that a crime based on omission to perform a duty imposed by Utah law is committed in Utah.

Because defendant failed to perform a duty imposed by Utah law—supporting his children—the resultant crime was committed in Utah.

No Utah case has addressed this issue. Defendant cites many cases, including two Utah cases, finding jurisdiction over a nonresident parent if the children reside in the charging state. These cases are inapposite because here the parent, not the children, resides in the charging state. The overwhelming majority of cases involving a fact pattern similar to the case at bar hold that the charging state has jurisdiction over a resident parent who fails to support his nonresident children. The few cases holding otherwise have been disavowed in their respective states or are otherwise of dubious authority.

The trial court correctly found jurisdiction to charge defendant in Utah.

ARGUMENT

THE STATE OF UTAH HAS JURISDICTION TO CHARGE A UTAH RESIDENT WITH VIOLATION OF A UTAH STATUTE FOR FAILING TO SUPPORT HIS NONRESIDENT CHILDREN

Defendant contends that Utah lacks jurisdiction to prosecute him "for an omission or failure to perform a duty to support his children who reside in Alaska." Aplt. Br. at 6. Defendant reasons that the act of a crime of omission occurs in the jurisdiction where the duty to perform lies and that because "the children live in Alaska and an Alaskan court entered the order of support, the duty to perform lies in Alaska." *Id.* Defendant further asserts that Utah has no interest in the support of children who do not live within the State. Aplt. Br. at 7.

Defendant's argument fails under the plain language of the Utah criminal jurisdiction statute. In addition, a strong majority of cases have held that the charging state has jurisdiction over a resident parent even if the children are nonresidents. The issue is one of first impression in Utah.

A. Under Utah's criminal jurisdiction statute, Utah has jurisdiction over a prosecution charging a Utah resident with violating a Utah statute.

Defendant, a Utah resident, is charged with violation of a Utah statute, Utah Code Ann. § 76-7-201 (1999), for acts he committed—or omitted—while in Utah. The trial court correctly ruled that "[b]ased on the plain language of the statute, the State has jurisdiction to prosecute." R. 170.

Whether Utah has jurisdiction over the prosecution of a Utah resident for violation of a Utah statute is controlled by Utah's criminal jurisdiction statute, Utah Code Ann. § 76-1-201 (1999). It states:

> (1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:
>
> (a) the offense is committed either wholly or partly within the state;
>
> . . .
>
> (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and such other jurisdiction.
>
> (2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is such an element, occurs within this state.
>
> . . .

> (4) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

Utah has jurisdiction over defendant under two separate provisions. the "wholly or partly" rule found in subsections (1) and (2), and the "omission" rule found in subsection (4)

"Wholly or partly" rule. Under the plain language of subsection (1)(a), Utah has jurisdiction over a crime committed "wholly or partly" within the state. Under subsection (2), a crime is committed partly within the state if the conduct constituting an element of the offense or a result constituting an element of the offense occurs in Utah. Here, defendant's conduct constituting an element of the offense occurred in Utah.

The charged offense of criminal nonsupport is defined in Utah Code Ann. § 76-7-201(1). A person commits the crime if:

> [1] having a spouse, a child, or children under the age of 18 years,
> [2] he knowingly
> [3] fails to provide for the support of the spouse, child, or children
> [4] when any one of them is . . . or would be in needy circumstances but for support received from a source other than the defendant . . .

Because defendant resides in Utah, elements [2] and [3] occurred here. Defendant failed to write and mail support checks. It was in Utah that those checks were not written and mailed. Therefore, conduct constituting an element of the offense occurred in Utah.

"Omission" rule. Subsection (4) also supports jurisdiction. It states: "An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the

omission." § 76-1-201(4). Here, the charged offense is "based on an omission to perform a duty imposed by the law of this state"—the father's duty to support his minor children, found in Utah Code Ann. § 76-7-201(1)(b) and § 78-45-3(1). Hence, without more, under the plain language of subsection (4), the offense was "committed within the state."

Defendant's rule. Defendant argues "that in order to be prosecuted in Utah for criminal non-support, the children must reside in Utah." Br. Aplt. at 7. Defendant infers this corollary from the rule that "[w]hen a child resides in Utah, . . . Utah has jurisdiction to prosecute for criminal non-support . . . regardless of the location of the parent." Br. Aplt. at 8. The State agrees that Utah has jurisdiction to prosecute a nonresident parent for nonsupport of resident children. In effect, this is the "result" half of the conduct-or-result disjunction found in subsection (2). But it does not follow, in logic or law, that because the state where the children (but not the parent) reside has jurisdiction over this offense, the state where the parent (but not the children) resides does not. The jurisdictional rule is not that the result must occur in Utah, but that the result *or the conduct* must occur here.

Defendant's argument rests on the unspoken premise that if jurisdiction is proper in one state it is improper in all others. This premise is false. A crime may be committed "within the concurrent jurisdiction of this state and of another jurisdiction . . ." Utah Code Ann. § 76-1-404 (1999).[1] This circumstance bars prosecution in this state only if a prior prosecution

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[1] Utah Code Ann. 76-1-404 (1999) states:

If a defendant's c luct establishes the commission of one or more offenses within the concurrent isdiction of this state and of another jurisdiction, federal or

for the same offense in another jurisdiction resulted in an acquittal or conviction or was improperly terminated. *Id.* Defendant does not claim that he was subject to any prior prosecution for this offense. Accordingly, the fact that Alaska or any other state may have concurrent jurisdiction to prosecute this offense does not bar a Utah prosecution.

Defendant's reliance on the Alaskan support order, see Br. Aplt. at 6, is equally unavailing. The existence of a support order is not an element of the crime of criminal nonsupport. *See* Utah Code Ann. § 76-7-201 (1999). Moreover, every Utah father—not just those subject to child support orders—has a statutory duty to support his children. *See* Utah Code Ann. § 78-45-3(1) ("Every father shall support his child . . .") (Supp. 2001).

Finally, defendant suggests that Utah has no interest in prosecuting a resident parent for not supporting nonresident children. Br. Aplt. at 14. Whether Utah has such an interest is within the discretion of the Legislature. But even if it were not, several policy reasons come to mind. Utah has an interest in preventing its residents from violating Utah criminal laws with impunity merely because their victims happen to reside out of state. Utah may legitimately seek to encourage parents to support their children. Utah may not wish to become a haven for parents fleeing their support obligations. Also, judicial economy favors

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state, the prosecution in the other jurisdiction is a bar to a subsequent prosecution in this state if (1) the former prosecution resulted in an acquittal, conviction, or termination of prosecution, as those terms are defined in Section 76-1-403,and (2) the subsequent prosecution is for the same offense or offenses.

a single prosecution for criminal nonsupport where the offending parent's children are scattered across several states.

B. Most states exert jurisdiction over a resident defendant charged with criminal nonsupport of nonresident children.

Defendant's position that a state lacks jurisdiction to charge its own resident with criminal nonsupport where his children reside out of state lacks case support.

Nonsupport cases discussing jurisdiction fall into two categories: (1) cases *like* the case at bar where the parent resides in the charging state but the children do not; and (2) cases *unlike* the case at bar where the children reside in the charging state but the parent does not. Defendant relies primarily on cases in the latter category.

1. Cases where the parent resides in the charging state but the children do not.

Utah courts have twice considered the issue of whether the state may prosecute a nonresident parent for failing to support children that reside in the state. *See Osborn v. Harris*, 203 P.2d 917, 921 (Utah 1944); *State v. Boudreaux*, 1999 UT App 310, ¶ 22, 989 P.2d 1103, discussed below. But Utah courts have never considered whether the state may prosecute a resident parent for nonsupport of nonresident children.

Defendant cites two foreign cases involving the prosecution of a resident parent who failed to support his nonresident children. Both are of limited weight. Defendant places primary reliance on *State v. Moss*, 791 S.W.2d 501 (Mo. Ct. App. 1990). In that appeal—in which the State of Missouri did not appear—the Southern District of the Missouri Court of Appeals held that Missouri could not prosecute a resident parent for failing to support

nonresident children on the theory that "Missouri courts have no jurisdiction to prosecute an offense which occurs in another state." *Id.* at 503.

However, only six months earlier, the Western District of the Missouri Court of Appeals held that a resident charged with nonsupport of nonresident children could be tried in Missouri. *See State v. Johnson*, 782 S.W.2d 827 (Mo. App. 1990). Subsequent legislation providing that a defendant may be prosecuted either in the county in which the child resided *or* in which the parent resided during the time the nonsupport occurred, Mo. Ann. Stat. § 568.040 (1999), lends support to *Johnson*.

The other case cited by defendant, *Sweetman v. State*, 152 A. 588 (Del. Ct. Gen. Sess. 1929), is even weaker. In *Sweetman*, the Court of General Sessions of Delaware interpreted the state nonsupport statute to require that the complaint be filed in the county in which the children resided. *Id.* at 589.

Sweetman was expressly disavowed fifteen years later by the Superior Court of Delaware in *In re Alexander*, 36 A.2d 361 (Del. Super. Ct.).[2] The *Alexander* court held that

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[2] The Court of General Sessions of Delaware, in which *Sweetman* was decided, was that state's criminal tribunal in 1929. The *Sweetman* case came before the Court of General Session on appeal from a Municipal Court. 152 A. at 588. The Superior Court of Delaware was a civil court with limited appellate jurisdiction. *In re Alexander* was heard by the Superior Court in a habeas corpus proceeding. The Superior Court and the Court of General Sessions were both exercising appellate review in their respective cases, and both courts were presided over by one or two judges selected from the same panel of six judges. The weight of their conflicting decisions may therefore properly be analogized to that of different panels of the Utah Court of Appeals. *See generally* Paul Dolan, *The Supreme Court of Delaware 1900-1950*, Supreme Court of Delaware, *at* http://courts.state.de.us/supreme/history1.htm (last updated May 7, 2001).

"a husband living in this State and subject to our laws, is liable in the jurisdiction in which he lives, regardless as to where the original desertion took place." *Id.* at 366. It dismissed *Sweetman* as having been "clearly and solely based on Section 3535," a section "intended solely" to govern venue. *Id.* at 366.[3]

Most criminal nonsupport cases involving a resident parent hold that "a father may be prosecuted for nonsupport of his minor children in the state of residence, even though the children are residing outside that state." 44 A.L.R.2d 886 § 10 (1955). *See Alexander*, 36 A.2d at 364 (holding that support duties are "enforceable in that place where the person responsible for those duties was located"); *State v. Borum*, 178 So. 371, 373 (La. 1937) ("The offense is committed at the place where the father may be found within the state, and not at the place of residence of the children."); *State v. James*, 100 A.2d 12, 12 (Md. 1953) (holding Maryland could try criminally a "father living in the State on the charge of wilful failure to support his children who live in another State"); *Johnson*, 782 S.W.2d at 828 (holding that state may prosecute a resident nonsupporting parent with dependent in another jurisdiction); *State v. Rosenstock*, 1995 WL 723535 (Ohio App. 10 Dist. 1995) ("The act or omission of failing to provide adequate support takes place where the criminal defendant resides because that is where a defendant's failure to perform the required act fairly can be said to occur.");

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[3] One other case involving a resident defendant, though not cited in defendant's brief, found no jurisdiction. *See Commonwealth v. Shook*, 236 A.2d 559 (Super Ct. Penn. 1967). However, that case was based on the idiosyncratic venue provisions of Pennsylvania's bastardy statute. *See id.* at 418.

Smith v. State, 4 S.W. 351, 353 (Tenn. 1928) ("A person domiciled in this commonwealth is amendable to the statute, whether his minor child is here when the wrong upon him is committed") (quoting *Commonwealth v. Acker*, 83 N.E. 312, 312 (Mass. 1908)); *Government of the Virgin Islands v. Audain*, 366 F. Supp. 710, 713 (D. Virgin Is. 1973) (offense of willfully neglecting or refusing to provide support "may be said to have occurred at the parent's residence or at the place where the child resides, or both"); *State v. Jackson*, 112 S.E.2d 452, 457 (W. Va. 1960) (holding that where nonsupport statute expressly stated that action may lie in county of nonsupporting parent, jurisdiction is proper even though children were out of state). *See also* Restatement (Second) of Conflict of Laws § 77 (1971) (state may exercise jurisdiction over nonsupporting spouse if it has personal jurisdiction over that spouse or that spouse's property).

2. Cases where the children reside in the charging state but the parent does not.

The instant case does not involve the question of whether a nonresident parent can be prosecuted for criminal nonsupport in the jurisdiction where his children reside. Yet, except for *Moss* and *Sweeten*, the nonsupport cases cited by defendant all fall into this category. *See Wheat v. State*, 734 P.2d 1007 (Alaska App. 1987) (Arizona resident); *State v. Shaw*, 539 P.2d 250 (Idaho 1975) (Nevada resident); *State v. Taylor*, 625 N.E.2d 1334 (Ind. Ct. App. 1993) (Michigan resident); *State v. Sokolaski*, 987 P.2d 1130 (Kan. Ct. App. 1999) (Missouri resident); *State v. Warrick*, 125 N.W.2d 545 (Neb. 1964) (Texas resident); *Epp v. State*, 814 P.2d 1011 (Nev. 1991) (Oregon resident); *State v. Paiz*, 777 S.W.2d 575 (Tex. App. 1989)

(Colorado defendant), *affirmed* 817 S.W.2d 84 (Tex. Crim. App. 1991); *Osborn v. Harris*, 203 P.2d 917 (Utah 1949) (Oregon resident); *Boudreaux v. State*, 1999 UT App 310, 989 P.2d 1103 (Kentucky prosecution of Utah resident); *State v. Klein*, 484 P.2d 455 (Wash. Ct. App. 1971) (Montana resident); *Poole v. State*, 208 N.W.2d 328 (Wis. 1973) (Arizona resident). Any statements in these cases about prosecution of a resident defendant are dicta.

These cases hold that a nonresident parent may be prosecuted where his children reside. Defendant attempts to extract from them the inverse rule: that a resident defendant may *not* be prosecuted where his children do *not* reside. However, as explained above, the latter proposition does not follow from the former. That a defendant may be prosecuted where the children reside does not prove that he must be prosecuted where they reside. In fact, several precedents on which defendant relies expressly eschew his preferred rule.

For example, defendant cites *Klein*, 484 P.2d at 457, summarizing its holding parenthetically as follows: "offense of criminal non-support is committed where the children reside." Br. Aplt. at 9. This summary implies that a defendant may *only* be prosecuted where the children reside—indeed, absent this implication the case does not aid defendant's position. Yet *Klein* disavows this very implication: "We do not suggest that the crime of nonsupport occurs only in the state where the children are living." *Id.* at 458.

Osborn v. Harris is a Utah case involving the prosecution a nonresident defendant for failure to support his wife and children residing in Utah. 203 P.2d at 917-18. Defendant cites this case for the proposition that "the duty to support lies in the state where the children

are located." Br. Aplt. at 8 (citing *Osborn*, 203 P.2d at 920). Yet the supreme court, after stating this holding, went on to disavow the very rule defendant seeks to infer from it:

> We express no opinion upon what should be the ruling if the wife's selection of a particular state for residence was merely because she could cause him greater difficulty under its criminal statutes **nor do we express any opinion as to whether or not he is guilty of a crime in both states.**

Osborn, 203 P.2d at 921 (emphasis added). *See* R. 104, n.1.

Similarly, defendant describes parenthetically the holding of *Poole*, 208 N.W.2d at 331 as follows: "place where children reside, *not place where parent resides*, is location where crime of criminal non-support occurs." Br. Aplt. at 9 (emphasis added). Language similar to the emphasized portion does appear in *Poole*. *See* 208 N.W.2d at 331. Yet this Wisconsin opinion is not read so broadly in Wisconsin. Referring to the 1973 *Poole* opinion and a another Wisconsin case, the Wisconsin Court of Appeals in 1996 stated, "We have no quarrel with either decision. Neither holds . . . that nonsupport statutes may be enforced *only* in the place where the persons entitled to support resided during the period the defendant is alleged to have failed to support them." *State v. Gantt*, 548 N.W.2d 134, 136 (Wis. App. 1996).

Like other cases in this category, *Boudreaux v. State* did not involve a resident defendant and therefore is inapposite here. However, it merits comment because it is a Utah decision. *Boudreaux* was an extradition case. While residing in Utah, Boudreaux was indicted in Kentucky, where his child resided, for criminal nonsupport. *Id.* at ¶ 2-3. He challenged his extradition from Utah to Kentucky on the ground that "Utah, rather than Kentucky, has jurisdiction over the collection of any child support arrearages . . ." *Id.* at ¶

22. This Court disposed of Boudreaux's claim in a single paragraph, citing no case authority. Here is the complete analysis: "However, Boudreaux is charged with *criminal* flagrant nonsupport under Kentucky Rev. Stat. Ann. § 530.050 (Michie 1990), and the *civil* collection of child support is not at issue. We thus reject Boudreaux's argument that Utah has jurisdiction over him in this Kentucky criminal nonsupport matter." *Id.* at ¶ 22.

Boudreaux's argument presupposed that Utah had *exclusive* jurisdiction over the prosecution; a rule that both Utah and Kentucky had jurisdiction would not have defeated his extradition. Read in context, then, this Court's holding goes no further than to affirm the principle—endorsed by both parties here—that the state where the children reside has jurisdiction to prosecute a nonresident parent for criminal nonsupport.

The correct rule is one of concurrent jurisdiction, summarized in *State v. Chintalpalli*, 723 N.E.2d 111, 113 (Ohio 2000): "[T]he act of failing to provide support occurs in at least two venues: (1) the place where the defendant resides, *see Rosenstock* [cited above], and (2) the place where the defendant was required to perform a legal obligation."

Finally, that defendant may be extradited by Alaska, *see* Br. Aplt. at 13, does not deprive Utah of concurrent jurisdiction over him. *See Johnson*, 782 S.W.2d at 828 ("Contrary to Johnson's assertions, there is nothing in the URESA statute to suggest that the remedies or procedures provided therein are exclusive."); *Audain*, 366 F. Supp at 712 (holding that Uniform Reciprocal Enforcement of Support Act "should not and does not exclude the alternative remedy of criminal prosecution for nonsupport" in the parent's state).

In sum, under the plain language of the criminal jurisdiction statute, and under the clear weight of relevant authority, Utah has jurisdiction to prosecute a Utah resident for violation of the Utah criminal nonsupport act even if, as here, his children reside elsewhere.

CONCLUSION

The trial court's order should be affirmed.

RESPECTFULLY submitted on 12 July 2002.

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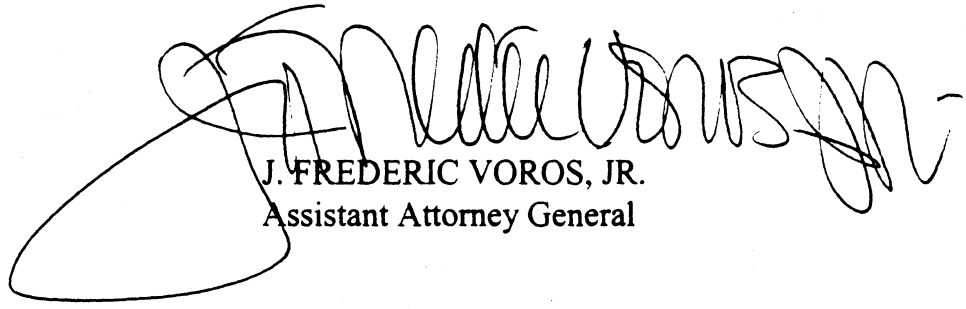

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CERTIFICATE OF SERVICE

I hereby certify that four copies of the foregoing Brief of Appellee were this 12 July 2002 hand-delivered to an agent for the following:

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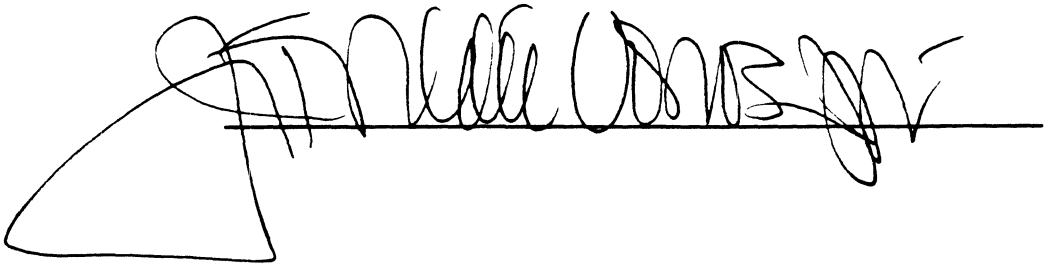

Addendum A

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
SANDY DEPARTMENT, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. JOHNSON, RICHARD A., Defendant.	)	**ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION** Case No. 001401011 Judge Denise P. Lindberg

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This matter came before the Honorable Denise P. Lindberg on May 18, 2001, at 2:00 p.m., pursuant to defendant's Motion to Dismiss for Lack of Jurisdiction. The State of Utah was represented by Ann Rozycki, Assistant Attorney General. The defendant was represented by his attorney, Stephen W. Howard. After hearing oral argument by the parties and reviewing the file, the court makes the following findings and order;

FINDINGS

1. Under Utah's criminal jurisdiction statute, Utah Code Ann. § 76-1-201(1), (2), and (4), an individual is subject to prosecution in this state if the offense is committed either in whole or in

part within the state. An offense is committed partly within the state if any element of the offense occurs within the state. When an offense is based on an omission to perform a duty imposed by the law of this state, the offense is committed within the state regardless of the location of the offender. Based on the plain language of the statute, the State has jurisdiction to prosecute.

2. The criminal nonsupport statute, Utah Code Ann. § 76-7-201, provides that a person commits the crime of nonsupport in Utah if having children under 18 years, he knowingly fails to provide support. The statute does not address the residency of the children.

3. Although the defendant's argument that Alaska, as the state where the children reside, has more interest in prosecuting the defendant than does Utah, and that the duty of support should lie solely where the children reside is not unreasonable; the court is not persuaded that Alaska's interest is exclusive, nor does it need to determine which state's interest is greater. The language of Utah's jurisdictional statute and criminal nonsupport statute do not facially impose the limitations the defendant seeks to have the court adopt.

ORDER

The court orders, therefore, that Defendant's Motion to Dismiss For Lack of Jurisdiction is denied.

DATED this 22nd day of August, 2001.

DENISE P. LINDBERG
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 001401011 by the method and on the date specified.

METHOD	NAME
Mail	ANN ROZYCKI ATTORNEY P.O. BOX 140835 SALT LAKE CITY, UT 84114-083
By Hand	STEPHEN W HOWARD

Dated this 22nd day of August, 2001.

Deputy Court Clerk